



Environmental Law Center
at the American Tradition Institute

October 7, 2011

The Honorable Gaylord L. Finch
Thirty-First Judicial Circuit of Virginia
Prince William County
9311 Lee Avenue, Third Floor
Manassas, Virginia 20110

FILED
2011 OCT 24 PM 12:28
CLERK OF COURT
PRINCE WILLIAM COUNTY, VA
BY [Signature] DEPUTY

**Re: The American Tradition Institute and the Honorable Delegate Robert Marshall
versus Rectors and Visitors of the University of Virginia**

Case No. CL11003236-00

Dear Judge Finch:

Although currently stayed, at some point the Court will direct the parties to implement the Order on Protection of Documents ("the Order"). The Parties have discussed how to implement the Order and at this time the Petitioners believe it useful to explain how they intend to operate under the Order. We inform the Court on this matter so that you will know the number of documents the parties intend to place before the court during ensuing arguments regarding whether the documents deserve exemption from the Virginia Freedom of Information Act ("FOIA"). In addition, we invite the Court to consider whether the attempt to render a representative sample would still overburden the Court and whether the Court wishes to suggest further refinements to Petitioners' plans.

As background to our proposal, we wish to explain elements of the negotiation that resulted in the Order. Upon initial inspection, the University of Virginia ("UVA") identified over 34,000 documents on a backup computer server. After screening the documents to identify those responsive to Petitioners' FOIA request, UVA believed they had identified 8,000 responsive documents of which they produced 1,783. At the time the parties drafted the Order, UVA believed it would continue to hold approximately 6,000 documents. Having now completed their full review of the documents on the backup server, UVA states they have identified over 12,000 documents consisting of approximately 40,000 pages to textual material.

In light of the size of this collection, Petitioners recognized two competing problems. They cannot mount an effective legal argument without some knowledge about the documents

Exhibit 1

being withheld and the normal means of gaining that information would be burdensome on UVA.

In *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973) the D.C. Circuit recognized the first problem, noting:

[I]t is anomalous but obviously inevitable that the party with the greatest interest in obtaining disclosure is at a loss to argue with desirable legal precision for the revelation of the concealed information. Obviously the party seeking disclosure cannot know the precise contents of the documents sought; secret information is, by definition, unknown to the party seeking disclosure. In many, if not most, disputes under the FOIA, resolution centers around the factual nature, the statutory category, of the information sought.

To ameliorate this problem the Court ordered the defendants to create what is now commonly called a *Vaughn* log – an index of all the documents that states the nature of the document that supports the FOIA exemption being claimed. Petitioners' counsel are unhappily familiar with these logs and have been responsible for preparing *Vaughn* logs with in excess of two million entries, requiring more than 10 person-years to prepare under deadlines of fewer than 90 days. We don't wish that burden on anyone. Petitioners asked UVA if they would be willing to create such a log, acknowledging to UVA the fact that this would require a large undertaking. Notably, as a state law matter, UVA and the Virginia FOIA process is not controlled by *Vaughn v. Rosen*, despite facing the same problems confronted in that case. UVA declined to prepare such a log, fairly observing they were not required to do so.

In light of Petitioners' need to "argue with desirable legal precision" and both the cumbersomeness and lack of duty to prepare a *Vaughn* log, the parties agreed instead to allow the Petitioners to select from the "exempt" collection a representative sample of documents the parties would use to focus the subsequent legal arguments. This approach resolved both problems. It relieved UVA of a burdensome effort while providing Petitioners' counsel the grist needed to make cogent legal arguments.

Petitioners wish to reiterate, the Order does not open the "exempt" documents to public inspection, nor do Petitioners' counsel intend to inspect the entire collection. Under the Order, Petitioners' counsel will examine a subset of the documents as counsel and are barred from disclosing the content of any documents they inspect. Notably, the parties agree that, for the reasons explained above, Petitioners' counsel has a need to inspect some "exempt" documents and have agreed to allow that under the Order. Petitioners are sensitive to the wishes of the UVA Faculty to not allow Petitioners' counsel to look at even a single document at any time, but recognize Petitioners counsel cannot properly advocate without access to some of the exempt documents. In order to be as sensitive to the UVA Faculty concerns as possible, and for efficiency, Petitioners plan to significantly restrict their review of the exempt documents as described below.

Petitioners have consulted statistical texts and expertise to determine how best to draw a relatively small, yet representative sample of the documents. Based on that statistical grounding,

Petitioners hope to present the Court with between about 25 to 50 exemplar documents, and hope to obtain those by examining from 100 to 200 of the total 12,000 documents.

Petitioners counsel will seek documents representing each of the following categories:

- a. Discussion of papers in preparation but published after those discussions, including specifically:
 - i. Discussions of IPCC report drafts, pre-publication,
 - ii. Discussion of other authors' papers with those other authors as parties to the email exchange, pre-publication,
 - iii. Discussion of other authors' papers, pre-publication, without those authors party to the particular exchange;
- b. Discussion of possible or suggested peer reviewers;
- c. Discussion of journals' review and/or editorial processes;
- d. Scientific discussion of research (anyone's), theory or other science not linked to intended research or preparation or review of a paper;
- e. Communications on (then) current or proposed political or activist activities;
- f. Discussion of requests for data, code, or method from or by any party;
- g. Statements about deleting, hiding, denying the existence of or refusing to provide data to requesting parties inquiring about published work;
- h. Communications with the news media, be it print, broadcast or on-line;
- i. Collegial communications unrelated to science or research (including gossip);
- j. Communications about meetings and meeting agenda which have since been held;
- k. Mails containing no content other than personal logistics;
- l. Data files relied upon in or by now published work, including but not limited to refereed papers;
- m. Model output relied upon in or by now-published work, including but not limited to refereed papers;
- n. Computer code used to prepare now-published work, including but not limited to refereed papers

Petitioners counsel will pull 100 documents from the collection by selecting every 120th email in the collection, beginning with a randomly selected email amongst the first 120 documents. If this sample fails to identify an exemplar for each of the categories above, Petitioners counsel will pull a second 100 documents. If, after a second sampling there remain unrepresented categories, Petitioners counsel will make a narrow word search to attempt to fill all categories. Petitioners counsel will create a log of its searches so the parties and the Court will know what documents have been inspected. If emails from the first sample of 100 suggest the need for additional categories, Petitioners' counsel will select such an exemplar and add the category.

In addition to the serially selected sample, Petitioners counsel will search for copies of a set of emails (about 10) already within the public domain and expected to be in the UVA collection.

Petitioners counsel suggest that this approach will provide the necessary basis for their advocacy needs while minimizing their inspection of the documents, all while providing a tractable representative sample of documents for the Court. As UVA has and continues to agree to Petitioners' counsel inspection of the content of some of the "exempt" documents, and as the proposed approach directly addresses the UVA Faculty concerns regarding limiting inspection of the documents, we forward this discussion to the Court and to the parties, and invite the Court to provide us any further direction it finds necessary.

Sincerely,

A handwritten signature in black ink, appearing to read "David W. Schnare", with a stylized flourish at the end.

David W. Schnare
Director
ATI Environmental Law Center

cc: Richard C. Kast, Esq.
Scott Newton, Esq.
Sarah Knapp, Esq.

Testimony Before the
United States Senate
Committee on Environment and Public Works
Washington, D.C.

Wednesday, September 26, 2007

**“Responses to Climate Change and their Implications on
Preservation and Restoration of the Chesapeake Bay”**

Presented by
David W. Schnare, Esq. Ph.D.¹
Thomas Jefferson Institute for Public Policy

Good morning Madam Chairman and Members of the Committee. On behalf of the Thomas Jefferson Institute for Public Policy, we appreciate your invitation to attend this Hearing and thank you for the opportunity to participate in a discussion involving two issues on which the Institute has a continuing strong interest – Restoration of the Chesapeake Bay and the implications of alternative responses to global warming and climate change.

The greatest threat to restoration of the Chesapeake Bay comes not from the potential geophysical effects of climate change, but from the potential responses to climate change and, in particular, exclusive reliance on a strategy of reducing greenhouse gases. The scientific community has reached a consensus on this. As Nobel Laureate Paul Crutzen admits, efforts to forestall climate change exclusively through reductions in greenhouse gases is no more than “a pious wish”.^{2 3} Public reports show nations have rejected this strategy⁴, and without full, massive global cooperation, reliance on greenhouse gas reductions, alone, will fail.

¹ Dr. Schnare is the Institute’s Senior Fellow for Energy and the Environment. His position with the Institute is *pro bono*. He has been employed by the U.S. Environmental Protection Agency for 30 years and currently serves as a Senior Counsel in the Office of Civil Enforcement prosecuting violations of the nation’s Clean Air Act. This testimony reflects the views of the author and does not necessarily reflect the position of the U.S. EPA or the Thomas Jefferson Institute. Dr. Schnare received his doctorate in environmental science and management from the University of North Carolina –Chapel Hill (1978) and his Juris Doctor Cum Laude from the George Mason University School of Law (1999).

² P. J. Crutzen, “Albedo Enhancement By Stratospheric Sulfur Injections: A Contribution To Resolve A Policy Dilemma?” *Climate Change*, September 1, 2006; see: <http://downloads.heartland.org/19632.pdf>.

³ And see: William B. Mills, “Geoengineering Techniques To Mitigate Climate Change: From Futuristic To Down-To-Earth Approaches”, American Geophysical Union, Fall Meeting 2006, abstract #GC51A-0451, “Within the past several years, more and more scientists are questioning whether these techniques can be implemented on a global scale quickly enough to avoid dangerous anthropogenic climate change impacts. Further, some signatories to the Kyoto Protocol have already indicated they will not be able to meet their reductions of emissions by the agreed upon date of 2012, and in fact expect to increase their emissions. An important question becomes: Are there other mitigation techniques that could be used in a supplemental manner to help control anthropogenically-induced climate change should those techniques mentioned above fall short? In fact there are a variety of techniques that are commonly called geo-engineering methods” <http://adsabs.harvard.edu/abs/2006AGUFMGC51A0451M>.

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT

Executive Branch

- Why Must I File?** The duties and responsibilities of your position require you to file the Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. The purpose of this report is to assist employees and their agencies in avoiding conflicts between official duties and private financial interests or affiliations. The information you provide will only be used for legitimate purposes, and will not be disclosed to any requesting person unless authorized by law. (See the Privacy Act Statement at the bottom of this page.) Please ensure that the information you provide is complete and accurate.
- When Must I File?** **New Entrants:** The report is due within 30 days of your assuming a position designated for filing, unless your agency requests the report earlier or your agency grants you a filing extension.
Annual Filers: The report is due no later than February 15, unless your agency grants you a filing extension.
- What is the Reporting Period?** **New Entrants:** Report the required information for the 12 months preceding your filing of this form.
Annual Filers: Report the required information for the preceding calendar year (January 1 – December 31).
- What If I Have Questions?** If you have any questions about how to complete this form, please contact your ethics official or go to the Office of Government Ethics web site at www.usoge.gov and click on OGE 450 FAQs.

PENALTIES

Falsification of information or failure to file or report information required to be reported may subject you to disciplinary action by your employing agency or other authority. Knowing and willful falsification of information required to be reported may also subject you to criminal prosecution.

Privacy Act Statement

Title I of the Ethics in Government Act of 1978 (5 U.S.C. App.), Executive Order 12674 (as modified by Executive Order 12731), and 5 CFR Part 2634, Subpart I, of the Office of Government Ethics regulations require the reporting of this information. The primary use of the information on this form is for review by Government officials of your agency, to determine compliance with applicable Federal conflict of interest laws and regulations. Additional disclosures of the information on this report may be made: (1) to a Federal, State, or local law enforcement agency if the disclosing agency becomes aware of a violation or potential violation of law or regulation; (2) to a court or party in a court or Federal administrative proceeding if the Government is a party or in order to comply with a judge-issued subpoena; (3) to a source when necessary to obtain information relevant to a conflict of interest investigation or decision; (4) to the National Archives and Records Administration or the General Services Administration in records management inspections; (5) to the Office of Management and Budget during legislative coordination on private relief legislation; (6) to the Department of Justice or in certain legal proceedings when the disclosing agency, and employee of the disclosing agency, or the United States is a party to litigation or has an interest in the litigation and the use of such records is deemed relevant and necessary to the litigation; (7) to reviewing officials in a new office, department or agency when an employee transfers from one covered position to another; (8) to a Member of Congress or a congressional office in response to an inquiry made on behalf of an individual who is the subject of the record, and (9) to contractors and other non-Government employees working for the Federal Government to accomplish a function related to an OGE Governmentwide system of records. This confidential report will not be disclosed to any requesting person unless authorized by law. See also the OGE/GOVT-2 executive branchwide Privacy Act system of records.

Public Burden Information

It is estimated that completing this form, including reviewing the instructions and gathering the data needed, takes an average of one hour. No person is required to respond to a collection of information unless it displays a currently valid OMB control number as printed in the top right-hand corner of the first page of this form. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Deputy Director for Administration and Information Management, U.S. Office of Government Ethics, Suite 500, 1201 New York Avenue, NW, Washington, DC 20005-3917. Do not send your completed OGE Form 450 to this address.

Exhibit 3

Date Received by Agency

Page Number

1

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT

Executive Branch

Employee's Name (<i>Print last, first, middle initial</i>) Schnare, David W.		E-mail Address schnare.david@epa.gov	
Position/Title Attorney Advisor			Grade 15/10
Agency U.S. Environmental Protection Agency		Branch/Unit and Address OECA/ORE/AED/SSEB	
Work Phone 202-564-4183	Reporting Status New Entrant <input type="checkbox"/> Annual <input checked="" type="checkbox"/>	If New Entrant, Date of Appointment to Position (mm/dd/yy)	
Check box if Special Government Employee (SGE) <input type="checkbox"/>	An SGE is an executive branch officer or employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.		
If an SGE, Mailing Address (<i>Number, Street, City, State, ZIP Code</i>)			

Step 1: Read the instructions for Parts I through V on the following pages.

Step 2: For each statement below, check Yes or No to describe your situation.

I. I have reportable assets or sources of income for myself, my spouse, or my dependent children.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
II. I have reportable liabilities (debts) for myself, my spouse, or my dependent children.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
III. I have reportable outside positions for myself.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
IV. I have reportable agreements or arrangements for myself.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
NOTE: Statement V is for <u>annual</u> filers only. It does not apply to new entrants and SGEs.		
V. I have reportable gifts or travel reimbursements for myself, my spouse, or my dependent children.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>

Step 3: If you selected Yes for any statement, you must describe the reportable interests that you have in the corresponding Part (I, II, III, IV, or V) of the form.

Step 4: Sign and date the form.

Step 5: Submit the completed form to your ethics office.

I certify that the statements I have made on this form and all attached statements are true, complete, and correct to the best of my knowledge.

Signature of Employee	Date (mm/dd/yy)
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FOR REVIEWERS' USE ONLY:

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations, except as noted in the "comments" box below.	
Signature and Title of Supervisor/Other Intermediate Reviewer (<i>If required by the agency</i>)	Date (mm/dd/yy)
E-mail Address	Phone Number
Signature and Title of Agency's Final Reviewing Official	Date (mm/dd/yy)
Comments of Reviewing Officials	
(Check box if continued on additional page <input type="checkbox"/>)	

Schnare, David W.

Employee's Name (Print last, first, middle initial) Schnare, David W.	Page Number 2
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Part I: Assets and Income

Report for Yourself, Spouse, and Dependent Child: <ul style="list-style-type: none"> Assets held for investment with a value greater than \$1,000 at the end of the reporting period OR assets held for investment which produced more than \$200 in income during the reporting period, including but not limited to: <ul style="list-style-type: none"> Assets such as stocks, bonds, annuities, trust holdings, partnership interests, life insurance, investment real estate, or a privately-held trade or business Sector mutual funds: those funds invested in a particular industry, business, or location such as ABC Electronics Fund or XYZ Canada Fund (report the full name of the fund, not just the general family fund name) Holdings of retirement plans, such as 401(k)s or IRAs (list each holding except diversified mutual funds) Holdings of investment life insurance Holdings of variable annuities Defined benefit pension plans provided by a former employer (include the name of the employer) 	Do Not Report: <ul style="list-style-type: none"> Federal Government retirement benefits Thrift Savings Plan Certificates of deposit, savings or checking accounts Term life insurance Money market mutual funds and money market accounts Your personal residence, unless you rent it out Diversified mutual funds, such as ABC Equity Value Fund or XYZ Large Capital Fund U.S. Government Treasury bonds, bills, notes, and savings bonds Money owed to you, your spouse, or dependent child by a spouse, parent, sibling, or child
Also Report: <ul style="list-style-type: none"> For yourself: (1) all sources of salary, fees, commissions, and other earned income greater than \$200, (2) honoraria greater than \$200, and (3) other non-investment income such as scholarships, prizes, and gambling income greater than \$200 For your spouse: (1) all sources of salary, fees, commissions, and other earned income greater than \$1,000, and (2) honoraria greater than \$200 	Do Not Report: <ul style="list-style-type: none"> Dependent child's earned income Veterans' benefits Federal Government salary Social Security benefits

Important Definitions

Diversified Mutual Fund – A mutual fund that does not have a stated policy of concentrating its investments in one industry, business, or single country other than the United States.
Sector Mutual Fund – A mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single state within the United States.
Dependent Child – A son, daughter, stepson or stepdaughter who is either unmarried and under age 21 and living in the filer's house, or considered dependent under the U.S. tax code.

Reportable Information – Go to the last page to see examples of how to report assets and income.

Specific stock, bond, sector mutual fund, type/location of real estate, etc. (Indicate the full name of each specific asset or investment. You may add the ticker symbol to the full name.) Name of Employer or Business; Source of Fees, Commissions, or Honoraria (Include brief description.) You may distinguish any entry for a family member by preceding it with S for spouse, DC for dependent child, or J for jointly held.	No longer held
¹ Honoraria - Liberty Fund (for participating in a seminar)	<input type="checkbox"/>
²	<input type="checkbox"/>
³	<input type="checkbox"/>
⁴	<input type="checkbox"/>
⁵	<input type="checkbox"/>

Employee's Name (Print last, first, middle initial) Schnare, David W.	Page Number
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Part I: Assets and Income
Continuation Page

Specific stock, bond, sector mutual fund, type/location of real estate, etc. (Indicate the full name of each specific asset or investment. You may add the ticker symbol to the full name.) Name of Employer or Business; Source of Fees, Commissions, or Honoraria (Include brief description.) You may distinguish any entry for a family member by preceding it with S for spouse, DC for dependent child, or J for jointly held.	No longer held
1	<input type="checkbox"/>
2	<input type="checkbox"/>
3	<input type="checkbox"/>
4	<input type="checkbox"/>
5	<input type="checkbox"/>
6	<input type="checkbox"/>
7	<input type="checkbox"/>
8	<input type="checkbox"/>
9	<input type="checkbox"/>
10	<input type="checkbox"/>
11	<input type="checkbox"/>
12	<input type="checkbox"/>
13	<input type="checkbox"/>
14	<input type="checkbox"/>
15	<input type="checkbox"/>
16	<input type="checkbox"/>
17	<input type="checkbox"/>
18	<input type="checkbox"/>
19	<input type="checkbox"/>
20	<input type="checkbox"/>

Employee's Name (Print last, first, middle initial) Schnare, David W.	Page Number 3
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Part II: Liabilities

Report for Yourself, Spouse, and Dependent Child:	Do Not Report:
<ul style="list-style-type: none"> A liability over \$10,000 owed at any time during the reporting period, other than a loan from a financial institution or business entity granted on terms made available to the general public A loan over \$10,000 from an individual, such as a friend or a business associate 	<ul style="list-style-type: none"> Any liability, such as a mortgage, a student loan, or a credit card account, from a financial institution or business entity granted on terms made available to the general public Loans secured by automobiles, household furniture, or appliances, unless the loan exceeds the purchase price of the item it secures Liabilities that you owe to your spouse or to the parent, sibling, or child of you, your spouse, or your dependent child

Reportable Information – Go to the last page to see examples of how to report liabilities.

Name of creditor (include city and state where creditor is located)	Type of liability (personal loan, margin account, etc.)
1	
2	

Part III: Outside Positions

Report for Yourself:	Do Not Report:
<ul style="list-style-type: none"> All positions outside the U.S. Government held at any time during the reporting period, whether or not you were compensated and whether or not you currently hold that position. Positions include an officer, director, employee, trustee, general partner, proprietor, representative, executor, or consultant of any of the following: <ul style="list-style-type: none"> Corporation, partnership, trust, or other business entity Non-profit or volunteer organization Educational institution 	<ul style="list-style-type: none"> Any position with a <ul style="list-style-type: none"> Religious entity Social entity Fraternal entity Political entity Any position held by your spouse or dependent child Any position that you hold as part of your official duties

Reportable Information – Go to the last page to see examples of how to report outside positions.

Organization (include city and state where organization is located)	Type of organization	Position	No longer held
1 Schnare & Associates, Burke, Virginia	Private Law Practice	President	<input type="checkbox"/>
2 Thomas Jefferson Institute for Public Policy	502(c)(3)	Senior fellow (unpaid)	<input type="checkbox"/>
3 Environmental Quality Advisory Council, Fairfax County, Virginia	Governmental Commission	Council member (unpaid appointment)	<input type="checkbox"/>
4 Attorney General's Regulatory Review Commission, Richmond, Virginia	Governmental Commission	Member (unpaid appointment)	<input type="checkbox"/>
5			<input type="checkbox"/>
6			<input type="checkbox"/>

Employee's Name (<i>Print last, first, middle initial</i>) Schnare, David W.	Page Number 4
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Part IV: Agreements or Arrangements

Report Your Agreements or Arrangements for:	Do Not Report:
<ul style="list-style-type: none"> Continuing participation in an employee pension or benefit plan maintained by a former employer A leave of absence Future employment, including date you accepted employment offer Continuation of payment by a former employer (including severance payments) 	<ul style="list-style-type: none"> Any agreement or arrangement related to your employment by the Federal Government Spouse's and dependent child's agreements or arrangements

Reportable Information – Go to the last page to see examples of how to report agreements and arrangements.

Entity with which you have an agreement or arrangement (<i>include city and state where entity is located</i>)	Terms of Agreement or Arrangement
1	
2	
3	
4	

Part V: Gifts and Travel Reimbursements

Fill out this part only if you are filling an Annual Report. If you are a new entrant or an SGE, skip this part.

Report for Yourself, Spouse, and Dependent Child:	Do Not Report:
<ul style="list-style-type: none"> Travel-related reimbursements (items such as lodging, transportation, and food) totaling more than \$305* from any one source during the reporting period; include where you traveled, the purpose, and date(s) of the trip Any other gifts totaling more than \$305* from any one source during the reporting period <p>*If you received more than one gift from one source:</p> <ol style="list-style-type: none"> Determine the value of each item you received from that source Ignore each item valued at \$122 or less Add the value of those items valued at more than \$122; if the total is more than \$305, then you must list those items on this form 	<ul style="list-style-type: none"> Anything received from relatives, the U.S. Government, D.C., state, or local governments Bequests and other forms of inheritance Gifts and travel reimbursements given to your agency in connection with your official travel Gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises Anything received by your spouse or dependent child totally independent of their relationship to you

Reportable Information – Go to the last page to see examples of how to report gifts and travel reimbursements.

Source	Description
1 Thomas Jefferson Institute for Public Policy	Paid travel and lodging to APEE annual conference (\$350)
2	
3	

3146B
3124

OGE Form 450, 5 CFR Part 2634, Subpart I
U.S. Office of Government Ethics (June 2008)
(Replaces January 2007 edition)

Schnare

Form Approved
OMB No. 3208-0006

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT

Executive Branch

- Why Must I File?** The duties and responsibilities of your position require you to file the Confidential Financial Disclosure Report to avoid involvement in a real or apparent conflict of interest. The purpose of this report is to assist employees and their agencies in avoiding conflicts between official duties and private financial interests or affiliations. The information you provide will only be used for legitimate purposes, and will not be disclosed to any requesting person unless authorized by law. (See the Privacy Act Statement at the bottom of this page.) Please ensure that the information you provide is complete and accurate.
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Exhibit 4

Date Received by Agency
 2/7/11 [Signature]

Page Number
 1

CONFIDENTIAL FINANCIAL DISCLOSURE REPORT

Executive Branch

Employee's Name (Print last, first, middle initial) Schnare, David W.		E-mail Address schnare.david@epa.gov	
Position/Title Attorney Advisor			Grade 15
Agency US EPA		Branch/Unit and Address OECA/OCE/AED/SSEB	
Work Phone 202-564-4183	Reporting Status New Entrant <input type="checkbox"/> Annual <input checked="" type="checkbox"/>	If New Entrant, Date of Appointment to Position (mm/dd/yy)	
Check box if Special Government Employee (SGE) <input type="checkbox"/>	An SGE is an executive branch officer or employee who is retained, designated, appointed, or employed to perform temporary duties either on a full-time or intermittent basis, with or without compensation, for a period not to exceed 130 days during any consecutive 365-day period.		
If an SGE, Mailing Address (Number, Street, City, State, ZIP Code)			

Step 1: Read the instructions for Parts I through V on the following pages.

Step 2: For each statement below, check Yes or No to describe your situation.

I. I have reportable assets or sources of income for myself, my spouse, or my dependent children.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
II. I have reportable liabilities (debts) for myself, my spouse, or my dependent children.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>
III. I have reportable outside positions for myself.	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>
IV. I have reportable agreements or arrangements for myself.	Yes <input type="checkbox"/>	No <input type="checkbox"/>
NOTE: Statement V is for <u>annual</u> filers only. It does not apply to new entrants and SGEs.		
V. I have reportable gifts or travel reimbursements for myself, my spouse, or my dependent children.	Yes <input type="checkbox"/>	No <input checked="" type="checkbox"/>

Step 3: If you selected Yes for any statement, you must describe the reportable interests that you have in the corresponding Part (I, II, III, IV, or V) of the form.

Step 4: Sign and date the form.

Step 5: Submit the completed form to your ethics office.

I certify that the statements I have made on this form and all attached statements are true, complete, and correct to the best of my knowledge.

Signature of Employee [Signature]	Date (mm/dd/yy) 2-7-2011
--------------------------------------	-----------------------------

FOR REVIEWERS' USE ONLY:

On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations, except as noted in the "comments" box below.	
Signature and Title of Supervisor/Other Intermediate Reviewer (If required by the agency)	Date (mm/dd/yy)
E-mail Address	Phone Number
Signature and Title of Agency's Final Reviewing Official	Date (mm/dd/yy)
Comments of Reviewing Officials	
(Check box if continued on additional page <input checked="" type="checkbox"/>)	

Save

Print

Schnare, David W.

Employee's Name (Print last, first, middle initial) Schnare, David W.	Page Number
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Part I: Assets and Income

Report for Yourself, Spouse, and Dependent Child: <ul style="list-style-type: none"> • Assets held for investment with a value greater than \$1,000 at the end of the reporting period OR assets held for investment which produced more than \$200 in income during the reporting period, including but not limited to: <ul style="list-style-type: none"> - Assets such as stocks, bonds, annuities, trust holdings, partnership interests, life insurance, investment real estate, or a privately-held trade or business - Sector mutual funds: those funds invested in a particular industry, business, or location such as ABC Electronics Fund or XYZ Canada Fund (report the full name of the fund, not just the general family fund name) - Holdings of retirement plans, such as 401(k)s or IRAs (list each holding except diversified mutual funds) - Holdings of investment life insurance - Holdings of variable annuities - Defined benefit pension plans provided by a former employer (include the name of the employer) 	Do Not Report: <ul style="list-style-type: none"> • Federal Government retirement benefits • Thrift Savings Plan • Certificates of deposit, savings or checking accounts • Term life insurance • Money market mutual funds and money market accounts • Your personal residence, unless you rent it out • Diversified mutual funds, such as ABC Equity Value Fund or XYZ Large Capital Fund • U.S. Government Treasury bonds, bills, notes, and savings bonds • Money owed to you, your spouse, or dependent child by a spouse, parent, sibling, or child
Also Report: <ul style="list-style-type: none"> • <u>For yourself:</u> (1) all sources of salary, fees, commissions, and other earned income greater than \$200, (2) honoraria greater than \$200, and (3) other non-investment income such as scholarships, prizes, and gambling income greater than \$200 • <u>For your spouse:</u> (1) all sources of salary, fees, commissions, and other earned income greater than \$1,000, and (2) honoraria greater than \$200 	Do Not Report: <ul style="list-style-type: none"> • Dependent child's earned income • Veterans' benefits • Federal Government salary • Social Security benefits

Important Definitions

Diversified Mutual Fund – A mutual fund that does not have a stated policy of concentrating its investments in one industry, business, or single country other than the United States.
Sector Mutual Fund – A mutual fund that concentrates its investments in an industry, business, single country other than the United States, or bonds of a single state within the United States.
Dependent Child – A son, daughter, stepson or stepdaughter who is either unmarried and under age 21 and living in the filer's house, or considered dependent under the U.S. tax code.

Reportable Information – Go to the last page to see examples of how to report assets and income.

Specific stock, bond, sector mutual fund, type/location of real estate, etc. (Indicate the full name of each specific asset or investment. You may add the ticker symbol to the full name.) Name of Employer or Business; Source of Fees, Commissions, or Honoraria (Include brief description.) You may distinguish any entry for a family member by preceding it with S for spouse, DC for dependent child, or J for jointly held.	No longer held
1 Spousal Salary - Mariae J. Schnare, Fairfax County, Senior Policy Assistant to Supervisor P. Herrity, Fairfax County Virginia.	<input type="checkbox"/>
2	<input type="checkbox"/>
3	<input type="checkbox"/>
4	<input type="checkbox"/>
5	<input type="checkbox"/>

Employee's Name (Print last, first, middle initial)
Schnare, David W.

Page Number

Part I: Assets and Income
Continuation Page

Specific stock, bond, sector mutual fund, type/location of real estate, etc. (Indicate the full name of each specific asset or investment. You may add the ticker symbol to the full name.) Name of Employer or Business; Source of Fees, Commissions, or Honoraria (Include brief description.) You may distinguish any entry for a family member by preceding it with S for spouse, DC for dependent child, or J for jointly held.	No longer held
1	<input type="checkbox"/>
2	<input type="checkbox"/>
3	<input type="checkbox"/>
4	<input type="checkbox"/>
5	<input type="checkbox"/>
6	<input type="checkbox"/>
7	<input type="checkbox"/>
8	<input type="checkbox"/>
9	<input type="checkbox"/>
10	<input type="checkbox"/>
11	<input type="checkbox"/>
12	<input type="checkbox"/>
13	<input type="checkbox"/>
14	<input type="checkbox"/>
15	<input type="checkbox"/>
16	<input type="checkbox"/>
17	<input type="checkbox"/>
18	<input type="checkbox"/>
19	<input type="checkbox"/>
20	<input type="checkbox"/>

Add Page

Employee's Name (Print last, first, middle initial) Schnare, David W.	Page Number
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Part II: Liabilities

Report for Yourself, Spouse, and Dependent Child:	Do Not Report:
<ul style="list-style-type: none"> A liability over \$10,000 owed at any time during the reporting period, other than a loan from a financial institution or business entity granted on terms made available to the general public A loan over \$10,000 from an individual, such as a friend or a business associate 	<ul style="list-style-type: none"> Any liability, such as a mortgage, a student loan, or a credit card account, from a financial institution or business entity granted on terms made available to the general public Loans secured by automobiles, household furniture, or appliances, unless the loan exceeds the purchase price of the item it secures Liabilities that you owe to your spouse or to the parent, sibling, or child of you, your spouse, or your dependent child

Reportable Information – Go to the last page to see examples of how to report liabilities.

Name of creditor (include city and state where creditor is located)	Type of liability (personal loan, margin account, etc.)
1	
2	

Part III: Outside Positions

Report for Yourself:	Do Not Report:
<ul style="list-style-type: none"> All positions outside the U.S. Government held at any time during the reporting period, whether or not you were compensated and whether or not you currently hold that position. Positions include an officer, director, employee, trustee, general partner, proprietor, representative, executor, or consultant of any of the following: <ul style="list-style-type: none"> Corporation, partnership, trust, or other business entity Non-profit or volunteer organization Educational institution 	<ul style="list-style-type: none"> Any position with a <ul style="list-style-type: none"> Religious entity Social entity Fraternal entity Political entity Any position held by your spouse or dependent child Any position that you hold as part of your official duties

Reportable Information – Go to the last page to see examples of how to report outside positions.

Organization (include city and state where organization is located)	Type of organization	Position	No longer held
1 Center for Environmental Stewardship, Thomas Jefferson Institute, Springfield, Virginia	State Policy Institute	Director (pro bono)	<input type="checkbox"/>
2 Environmental Law Center, American Tradition Institute (the Institute is a distributed organization with staff living in states throughout the nation)	National policy institute	Director (pro bono)	<input type="checkbox"/>
3			<input type="checkbox"/>
4			<input type="checkbox"/>
5			<input type="checkbox"/>
6			<input type="checkbox"/>

Add Page

Employee's Name (<i>Print last, first, middle initial</i>) Schnare, David W.	Page Number
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Part IV: Agreements or Arrangements

Report Your Agreements or Arrangements for: <ul style="list-style-type: none"> Continuing participation in an employee pension or benefit plan maintained by a former employer A leave of absence Future employment, including date you accepted employment offer Continuation of payment by a former employer (including severance payments) 	Do Not Report: <ul style="list-style-type: none"> Any agreement or arrangement related to your employment by the Federal Government Spouse's and dependent child's agreements or arrangements
--	--

Reportable Information – Go to the last page to see examples of how to report agreements and arrangements.

Entity with which you have an agreement or arrangement (<i>include city and state where entity is located</i>)	Terms of Agreement or Arrangement
1	
2	
3	
4	

Part V: Gifts and Travel Reimbursements

Fill out this part only if you are filing an Annual Report. If you are a new entrant or an SGE, skip this part.

Report for Yourself, Spouse, and Dependent Child: <ul style="list-style-type: none"> Travel-related reimbursements (items such as lodging, transportation, and food) totaling more than \$335* from any one source during the reporting period; include where you traveled, the purpose, and date(s) of the trip Any other gifts totaling more than \$335* from any one source during the reporting period <p>*If you received more than one gift from one source:</p> <ol style="list-style-type: none"> Determine the value of each item you received from that source Ignore each item valued at \$134 or less Add the value of those items valued at more than \$134; if the total is more than \$335, then you must list those items on this form 	Do Not Report: <ul style="list-style-type: none"> Anything received from relatives, the U.S. Government, D.C., state, or local governments Bequests and other forms of inheritance Gifts and travel reimbursements given to your agency in connection with your official travel Gifts of hospitality (food, lodging, entertainment) at the donor's residence or personal premises Anything received by your spouse or dependent child totally independent of their relationship to you
--	--

Reportable Information – Go to the last page to see examples of how to report gifts and travel reimbursements.

Source	Description
1	
2	
3	

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Information about WTI outside employment request

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Last Modified ByDavid Schmale

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WTI outside employment request

Exhibit 5



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

March 17, 2009

RECUSAL LETTER

Ed Messina, Chief
Stationary Source Branch
Air Enforcement Division
Office of Civil Enforcement

Dear Mr. Messina:

By this letter I recuse myself from participation in all agency decision processes associated with an endangerment finding under the Clean Air Act for greenhouse gases, including carbon dioxide, effective on the date of this letter as of 5:00 p.m.

I have not been assigned to work on these issues; these issues are not part of my portfolio; there is no reasonable expectation that the Agency will call upon me to apply my professional expertise to these issue; and I have outside interests associated with the relationship of greenhouse gases to planetary environmental conditions.

To ensure I cannot become involved in any conflict of interest on this topic, and upon advice of counsel, I make this recusal.

Sincerely,

A handwritten signature in black ink that reads "David W. Schnare".

David W. Schnare, Esq. Ph.D.
Attorney-Advisor

Exhibit 6

From: "Michael E. Mann" <mann@virginia.edu>
To: Phil Jones <p.jones@uea.ac.uk>, rbradley@geo.umass.edu,
mhughes@lrr.arizona.edu, srutherford@gso.uri.edu, tcrowley@duke.edu
Subject: Re: Fwd: Soon & Baliunas
Date: Tue, 11 Mar 2003 08:14:49 -0500
Cc: k.briffa@uea.ac.uk, jto@u.arizona.edu, drdendro@ldeo.columbia.edu,
keith.alverson@pages.unibe.ch, mmaccrac@comcast.net, jto@u.arizona.edu, mann@virginia.edu

Thanks Phil,

(Tom: Congrats again!)

The Soon & Baliunas paper couldn't have cleared a 'legitimate' peer review process anywhere. That leaves only one possibility--that the peer-review process at Climate Research has been hijacked by a few skeptics on the editorial board. And it isn't just De Frietas, unfortunately I think this group also includes a member of my own department... The skeptics appear to have staged a 'coup' at "Climate Research" (it was a mediocre journal to begin with, but now its a mediocre journal with a definite 'purpose'). Folks might want to check out the editors and review editors:
[1] <http://www.int-res.com/journals/cr/crEditors.html>
In fact, Mike McCracken first pointed out this article to me, and he and I have discussed this a bit. I've cc'd Mike in on this as well, and I've included Peck too. I told Mike that I believed our only choice was to ignore this paper. They've already achieved what they wanted--the claim of a peer-reviewed paper. There is nothing we can do about that now, but the last thing we want to do is bring attention to this paper, which will be ignored by the community on the whole...
It is pretty clear that these skeptics here have staged a bit of a coup, even in the presence of a number of reasonable folks on the editorial board (Whetton, Goodess, ...). My guess is that Von Storch is actually with them (frankly, he's an odd individual, and I'm not sure he isn't himself somewhat of a skeptic himself), and without Von Storch on their side, they would have a very forceful personality promoting their new vision. There have been several papers by Pat Michaels, as well as the Soon & Baliunas paper, that couldn't get published in a reputable journal. This was the danger of always criticising the skeptics for not publishing in the "peer-reviewed literature". Obviously, they found a solution to that--take over a journal! So what do we do about this? I think we have to stop considering "Climate Research" as a legitimate peer-reviewed journal. Perhaps we should encourage our colleagues in the climate research community to no longer submit to, or cite papers in, this journal. We would also need to consider what we tell or request of our more reasonable colleagues who currently sit on the editorial board...
What do others think?

Mike

At 08:49 AM 3/11/2003 +0000, Phil Jones wrote:

Dear All,

Apologies for sending this again. I was expecting a stack of emails this morning in response, but I inadvertently left Mike off (mistake in pasting) and picked up Tom's old address. Tom is busy though with another offspring !

I looked briefly at the paper last night and it is appalling - worst word I can think of today without the mood pepper appearing on the email ! I'll have time to read more at the weekend

as I'm coming to the US for the DoE CCPP meeting at Charleston. Added Ed, Peck and Keith A. onto this list as well. I would like to have time to rise to the bait, but I have so much else on at the moment. As a few of us will be at the EGS/AGU meet in Nice, we should consider what to do there.

The phrasing of the questions at the start of the paper determine the answer they get. They have no idea what multiproxy averaging does. By their logic, I could argue 1998 wasn't the warmest year globally, because it wasn't the warmest everywhere. With their LIA being 1300-1900 and their MWP 800-1300, there appears (at my quick first reading) no discussion of synchronicity of the cool/warm periods. Even with the instrumental record, the early and late 20th century warming periods are only significant locally at between 10-20% of grid boxes.

Writing this I am becoming more convinced we should do something - even if this is just to state once and for all what we mean by the LIA and MWP. I think the skeptics will use this paper to their own ends and it will set paleo back a number of years if it goes unchallenged.

I will be emailing the journal to tell them I'm having nothing more to do with it until they rid themselves of this troublesome editor. A CRU person is on the editorial board, but papers get dealt with by the editor assigned by Hans von Storch.

Exhibit 7

Cheers

Phil

Dear all,

Tim Osborn has just come across this. Best to ignore probably, so don't let it spoil your

day. I've not looked at it yet. It results from this journal having a number of editors. The

responsible one for this is a well-known skeptic in NZ. He has let a few papers through by

Michaels and Gray in the past. I've had words with Hans von Storch about this, but got nowhere.

Another thing to discuss in Nice !

Cheers

Phil

X-Sender: f055@pop.uea.ac.uk

X-Mailer: QUALCOMM Windows Eudora Version 5.1

Date: Mon, 10 Mar 2003 14:32:14 +0000

To: p.jones@uea

From: Tim Osborn <t.osborn@uea.ac.uk>

Subject: Soon & Baliunas

Dr Timothy J Osborn

Senior Research Associate

Climatic Research Unit

School of Environmental Sciences

University of East Anglia

Norwich NR4 7TJ

UK

| phone:

| fax: +44 1603 507784

| e-mail: t.osborn@uea.ac.uk

| web-site:

| [2]<http://www.cru.uea.ac.uk/~timo/>

| sunclock:

| [3]<http://www.cru.uea.ac.uk/~timo/sunclock.htm>

Prof. Phil Jones

Climatic Research Unit

Telephone

School of Environmental Sciences Fax +44 (0) 1603 507784

University of East Anglia

Norwich

Email p.jones@uea.ac.uk

NR4 7TJ

UK

Professor Michael E. Mann
Department of Environmental Sciences, Clark Hall
University of Virginia
Charlottesville, VA 22903

e-mail: mann@virginia.edu Phone: FAX: (434) 982-2137
[4]<http://www.evsc.virginia.edu/faculty/people/mann.shtml>

References

1. <http://www.int-res.com/journals/cr/crEditors.html>
2. <http://www.cru.uea.ac.uk/~timo/>
3. <http://www.cru.uea.ac.uk/~timo/sunclock.htm>
4. <http://www.evsc.virginia.edu/faculty/people/mann.shtml>

From: Ben Santer <santer1@llnl.gov>
To: Phil Jones <p.jones@uea.ac.uk>, ris@email.unc.edu
Subject: More on Climate Research.....
Date: Fri, 11 Jul 2003 12:40:57 -0700
Cc: Tom Wigley <wigley@ucar.edu>, "Michael E. Mann" <mann@virginia.edu>, Mike Hulme <m.hulme@uea.ac.uk>

Dear Phil,

In June 2003, Climate Research published a paper by David Douglass et al. The "et al." includes John Christy and Pat Michaels. Douglass et al. attempt to debunk the paper that Tom and I published in JGR in 2001 ("Accounting for the effects of volcanoes and ENSO in comparisons of modeled and observed temperature trends"; JGR 106, 28033-28059). The Douglass et al. paper claims (and purports to show) that collinearity between ENSO, volcanic, and solar predictor variables is not a serious problem in studies attempting to estimate the effects of these factors on MSU tropospheric temperatures. Their work has serious scientific flaws - it confuses forcing and response, and ignores strong temporal autocorrelation in the individual predictor variables, incorrectly assuming independence of individual monthly means in the MSU 2LT data. In the Douglass et al. view of the world, uncertainties in predictor variables, observations, etc. are non-existent. The error bars on their estimated ENSO, volcano, and solar regression coefficients are miniscule.

Over a year ago, Tom and I reviewed (for JGR) a paper by Douglass et al. that was virtually identical to the version that has now appeared in Climate Research. We rejected it. Prior to this, both Tom and I had engaged in a long and frustrating dialogue with Douglass, in which we attempted to explain to him that there are large uncertainties in the deconvolution of ENSO, volcano, and solar signals in short MSU records. Douglass chose to ignore all of the comments we made in this exchange, as he later ignored all of the comments we made in our reviews of his rejected JGR paper.

Although the Douglass et al. Climate Research paper is largely a criticism of our previously-published JGR paper, neither Tom nor I were asked to review the paper for Climate Research. Nor were any other coauthors of the Santer et al. JGR paper asked to review the Douglass et al. manuscript. I'm assuming that Douglass specifically requested that neither Tom nor I should be allowed to act as reviewers of his Climate Research paper. It would be interesting to see his cover letter to the journal.

In the editorial that you forwarded, Dr. Kinne writes the following:

"If someone wishes to criticise a published paper s/he must present facts and arguments and give criticised parties a chance to defend their position." The irony here is that in our own experience, the "criticised parties" (i.e., Tom and I) were NOT allowed to defend their positions.

Based on Kinne's editorial, I see little hope for more enlightened editorial decision making at Climate Research. Tom, Richard Smith and I will eventually publish a rebuttal to the Douglass et al. paper. We'll publish this rebuttal in JGR - not in Climate Research.

With best regards,

Ben

Phil Jones wrote:

>
> Dear All,
> Finally back in the UK after Asheville and IUGG. Attached is an
> editorial from the
> latest issue of climate research. I can only seem to save it this way.
> Seems like we are
> now the bad guys.

>
> Cheers
> Phil

> At 07:51 04/07/03 -0600, Tom Wigley wrote:

> >Mike (Mann),
> >I agree that Kinne seems like he could be a deFreitas clone. However, what
> >would be our legal position if we were to openly and extensively tell
> >people to avoid the journal?
> >Tom.

>
>
> >Michael E. Mann wrote:
> >>Thanks Mike

Exhibit 8

> >>It seems to me that this "Kinne" character's words are disingenuous, and
> >>>he probably supports what De Freitas is trying to do. It seems clear we
> >>have to go above him.
> >>I think that the community should, as Mike H has previously suggested in
> >>this eventuality, terminate its involvement with this journal at all
> >>levels--reviewing, editing, and submitting, and leave it to wither way
> >>into oblivion and disrepute,
> >>Thanks,
> >>mike
> >>At 01:00 PM 7/3/2003 +0100, Mike Hulme wrote:
> >>
> >>>Phil, Tom, Mike,
> >>>
> >>>So, this would seem to be the end of the matter as far as Climate
> >>>Research is concerned.
> >>>
> >>>Mike
> >>>
> >>>>To
> >>>>CLIMATE RESEARCH
> >>>>Editors and Review Editors
> >>>>
> >>>>Dear colleagues,
> >>>>
> >>>>In my 20.06. email to you I stated, among other things, that I would
> >>>>ask CR editor Chris de Freitas to present to me copies of the
> >>>>reviewers' evaluations for the 2 Soon et al. papers.
> >>>>
> >>>>I have received and studied the material requested.
> >>>>
> >>>>Conclusions:
> >>>>
> >>>>1) The reviewers consulted (4 for each ms) by the editor presented
> >>>>detailed, critical and helpful evaluations
> >>>>
> >>>>2) The editor properly analyzed the evaluations and requested
> >>>>appropriate revisions.
> >>>>
> >>>>3) The authors revised their manuscripts accordingly.
> >>>>
> >>>>Summary:
> >>>>
> >>>>Chris de Freitas has done a good and correct job as editor.
> >>>>
> >>>>Best wishes,
> >>>>Otto Kinne
> >>>>Director, Inter-Research
> >>>>--
> >>>>-----
> >>>>Inter-Research, Science Publisher
> >>>>Ecology Institute
> >>>>Nordbunte 23,
> >>>>D-21385 Oldendorf/Luhe,
> >>>>Germany
> >>>>Tel: Email: ir@int-res.com
> >>>>Fax: (+49) (4132) 8883 <http://www.int-res.com> <<http://www.int-res.com/>>
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> >>>>-----
> >>>>
> >>>>
> >>>>Professor Michael E. Mann
> >>>>Department of Environmental Sciences, Clark Hall
> >>>>University of Virginia
> >>>>Charlottesville, VA 22903
> >>>>
> >>>>e-mail: mann@virginia.edu Phone: FAX: (434) 982-2137

> >> <http://www.evsc.virginia.edu/faculty/people/mann.shtml>
> >
>
> Prof. Phil Jones
> Climatic Research Unit Telephone
> School of Environmental Sciences Fax +44 (0) 1603 507784
> University of East Anglia
> Norwich Email p.jones@uea.ac.uk
> NR4 7TJ
> UK

> -----
>
> Name: CR.txt
> CR.txt Type: Plain Text (text/plain)
> Encoding: quoted-printable

--

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Benjamin D. Santer
Program for Climate Model Diagnosis and Intercomparison
Lawrence Livermore National Laboratory
P.O. Box 808, Mail Stop L-103
Livermore, CA 94550, U.S.A.
Tel:
FAX: (925) 422-7675
email: santer1@llnl.gov



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Enforcement and
Compliance Assurance

MEMORANDUM

Date: February 11, 2008

From: David W. Schnare, Esq. Ph.D.
Attorney-Advisor
Air Enforcement Division

Thru: Ed Messina, Acting Chief
Stationary Source Enforcement Branch
Air Enforcement Division

Gary Jonesi, Esq.
Senior Counsel
Office of Civil Enforcement

To: Walker Smith, Director
Deputy Ethics Officer
Office of Civil Enforcement

Subject: Approval for Outside Employment

Pursuant to 5 C.F.R. § 6401 and 5 C.F.R. § 2635, this memorandum seeks prior approval for outside employment. In accord with the above cited code and implementing regulations, please review the following information and provide approval for participation in a meeting to be held in New York City on March 2 – 4, 2008 and hosted by the Heartland Institute.

The purpose of my presentation is to discuss geoengineering, a form of large-scale engineering that has been used to modify planetary phenomena including rainfall, ocean acidity and solar radiation management. The Institute has requested that I speak at this meeting as the Senior Fellow of the Thomas Jefferson Institute for Public Policy. The Heartland Institute will pay for travel and hotel accommodations and provide an small honorarium. They intend to publish the proceedings of the meeting. I will prominently place a disclaimer on my written submissions as part of my brief biographical entry and will make a similar disclaimer at the commencement of my presentation at the meeting.

Exhibit 9

Information Required under § 6401.103

(1) Employee's name, title and grade

David W. Schnare, Attorney-Advisor GS 15/10

(2) Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;

I will prepare and deliver a 20 minute presentation on the state of the art of geoengineering,.

(3) The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);

At the meeting, I will represent the Thomas Jefferson Institute for Public Policy, for which I am an unpaid Senior Fellow for Energy and the Environment. The Jefferson Institute is a 501(c)(3) certified non-profit organization operating in Virginia. The meeting at which I speak is being hosted by the Heartland Institute, a 501(c)(3) certified non-profit organization operation in Chicago, Illinois. As discussed, *supra*, I will present a paper at a meeting sponsored by the Heartland Institute, speaking as a Senior Fellow for the Jefferson Institute.

(4) The estimated time to be devoted to the activity;

The meeting is scheduled for March 2 – 4, 2008. I will take leave to attend the meeting.

(5) Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);

All services I provide, including preparation of a presentation, will be performed entirely outside normal duty hours.

(6) The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

I will use no official duty time or Government property, resources, or facilities not available to the general public in connection with the outside employment.

(7) The basis for compensation (e.g., fee, per diem, per annum, etc.);

The Heartland Institute has offered to pay hotel and travel expenses and award a \$1,000 honorarium.

(8) The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and Sec. 6401.102;

I have read and am familiar with, and will abide by the restrictions described in 5 CFR part 2635 and Sec. 6401.102

(9) An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

The Thomas Jefferson Institute for Public Policy does not accept grants from or enter contracts with federal governmental units. I am unaware of any assistance agreements or contracts between EPA and the Heartland Institute, despite a good faith effort to identify same.

Analysis of the Outside Activity

EPA should approve of the proposed outside employment, and in particular the honorarium, based on an analysis of the relevant code and because the speaking engagement does not relate to my official duties. Specifically, 5 C.F.R. § 2635.807 controls the approval.

In general, an employee may not receive compensation for speaking that relates to the employee's official duties.

Sec. 2635.807 Teaching, speaking and writing.

(a) Compensation for teaching, speaking or writing. Except as permitted by paragraph (a)(3) of this section, an employee, including a special Government employee, shall not receive compensation from any source other than the Government for teaching, speaking or writing that relates to the employee's official duties.

This prohibition, however, is narrow and applies only with regard to an employee's official duties, a term defined under rule. The rules specifically allow for compensation for speaking on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility, as long as it is not a matter to which the employee is assigned or does not deal in significant part with any ongoing or announced policy, program or operation of the agency. See, 5 C.F.R. § 2635.807(a)(2)(i)(E), to wit:

(2) Definitions. For purposes of this paragraph:

(i) Teaching, speaking or writing relates to the employee's official duties if:

(A) The activity is undertaken as part of the employee's official duties;

(B) The circumstances indicate that the invitation to engage in the activity was extended to the employee primarily because of his official position rather than his expertise on the particular subject matter;

(C) The invitation to engage in the activity or the offer of compensation for the activity was extended to the employee, directly or indirectly, by a person who has interests that may be affected substantially by performance or nonperformance of the employee's official duties;

(D) The information conveyed through the activity draws substantially on ideas or official data that are nonpublic information as defined in Sec. 2635.703(b); or

(E) Except as provided in paragraph (a)(2)(i)(E)(4) of this section, the subject of the activity deals in significant part with:

(1) Any matter to which the employee presently is assigned or to which the employee had been assigned during the previous one-year period;

(2) Any ongoing or announced policy, program or operation of the agency;

Note: Section 2635.807(a)(2)(i)(E) does not preclude an employee, other than a covered noncareer employee, from receiving compensation for teaching, speaking or writing on a subject within the employee's discipline or inherent area of expertise based on his educational background or experience even though the teaching, speaking or writing deals generally with a subject within the agency's areas of responsibility.

With regard to official duties, I am an attorney-advisory enforcing environmental regulations under the Clean Air Act. Nothing in my job description involves research on or application of geoengineering. Rather, my studies on geoengineering fall within the discipline and inherent area of expertise of an environmental scientist. The University of North Carolina – Chapel Hill awarded me a Master of Science in Public Health and an Ph.D. in environmental science and management, and I follow the science of geoengineering in order to remain current on environmental scientific matters, a practice that is not within my duties as an attorney-advisor. The Air Enforcement Division has no cases involving geoengineering and the Agency has no rules addressing geoengineering in any manner.

With regard to the invitation, I was not invited on the basis of my EPA employment, but rather on the basis of my knowledge about geoengineering.

The invitation was extended by the Heartland Institute, a non-profit organization not regulated under the Clean Air Act and thus not affected substantially by my performance or nonperformance.

The information I will convey in my presentation draws exclusively on ideas and data that are entirely within the public domain.

Finally, my presentation will address matters that do not involve any ongoing or announced policy, program or operation of the agency. I have conducted a duly diligent examination of EPA's organization and internet presence (the web) and have found only 38 citations to geoengineering on EPA's website. None of these identified an agency policy or program, or the operation of the agency. The majority of citations involved listings of activities either being used by or discussed by state governments. There is no research agenda element dealing with geoengineering nor is there a program with specific responsibility over geoengineering. I was unable to find any official pronouncement by the Agency regarding geoengineering and the word is not used in any speeches mounted on EPA's website and made by Agency managers or representatives.

The ethics rules provide two examples not unlike the proposed outside employment, both of which allow for compensation. They are cited in full below:

Example 2: A scientist at the National Institutes of Health, whose principal area of Government research is the molecular basis of the development of cancer, could not be compensated for writing a book which focuses specifically on the research she conducts in her position at NIH, and thus, relates to her official duties. However, the scientist could receive compensation for writing or editing a textbook on the treatment of all cancers, provided that the book does not focus on recent research at NIH, but rather conveys scientific knowledge gleaned from the scientific community as a whole. The book might include a chapter, among many other chapters, which discusses the molecular basis of cancer development. Additionally, the book could contain brief discussions of recent developments in cancer treatment, even though some of those developments are derived from NIH research, as long as it is available to the public.

Example 3: On his own time, a National Highway Traffic Safety Administration employee prepared a consumer's guide to purchasing a safe automobile that focuses on automobile crash worthiness statistics gathered and made public by NHTSA. He may not receive royalties or any other form of compensation for the guide. The guide deals in significant part with the programs or operations of NHTSA and, therefore, relates to the employee's official duties. On the other hand, the employee could receive royalties from the sale of a consumer's guide to values in used automobiles even though it contains a brief, incidental discussion of automobile safety standards developed by NHTSA.

My presentation will not discuss any EPA program, policy or operations, as the Agency has none addressing geoengineering. Thus, my presentation will not even include "a brief, incidental discussion" of EPA policies or programs.

For the reasons provided above, the rules controlling the proposed outside employment allow for compensation of hotel and travel expenses and award of an honorarium.



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

Office of Enforcement and
Compliance Assurance

MEMORANDUM

Date: November 16, 2010

From: David W. Schnare, Esq. Ph.D.
Attorney-Advisor
Air Enforcement Division

Thru: Greg Fried, Acting Chief
Stationary Source Enforcement Branch
Air Enforcement Division

To: Adam Kushner, Director
Deputy Ethics Officer
Office of Civil Enforcement

Subject: Approval for Outside Employment

Pursuant to 5 C.F.R. § 6401 and 5 C.F.R. § 2635, this memorandum seeks prior approval for outside employment. In accord with the above cited code and implementing regulations, please review the following information and provide approval for participation as a *pro bono* associate of the American Traditions Institute.

Information Required under § 6401.103

(1) Employee's name, title and grade

David W. Schnare, Attorney-Advisor GS 15/10

(2) Nature of the outside activity, including a full description of the services to be performed and the amount of compensation expected;

The American Tradition Institute is a 501(c)3 not-for-profit charitable public policy research educational and public interest law foundation. It exists to lead a national discussion about environmental issues, including air and water quality and regulation, responsible land use, natural resource management, energy development, property rights, and free-market principles of stewardship. I have been asked to serve, *pro bono*, as a

Exhibit 10

Director to the Institute and to help organize its planned law center. My duties as an Institute Director will not include fund-raising. My duties with the law center could include development of strategic plans, selection of projects and recruitment of staff. My duties would not include any representation at law of the Institute or its members. Institute and affiliated attorneys will conduct all representation of any matters at law.

- (3) The name and business of the person or organization for which the work will be done (in cases of self-employment, indicate the type of services to be rendered and estimate the number of clients or customers anticipated during the next 6 months);

The American Tradition Institute, a 501(c)3 not-for-profit charitable public policy research, educational and public interest law foundation.

- (4) The estimated time to be devoted to the activity;

Fifteen hours per week.

- (5) Whether the service will be performed entirely outside of normal duty hours (if not, estimate the number of hours of absence from work required);

All services will be performed entirely outside normal duty hours.

- (6) The employee's statement that no official duty time or Government property, resources, or facilities not available to the general public will be used in connection with the outside employment;

I will use no official duty time or Government property, resources, or facilities not available to the general public in connection with the outside employment.

- (7) The basis for compensation (e.g., fee, per diem, per annum, etc.);

My participation will be completely *pro bono*.

- (8) The employee's statement that he or she has read, is familiar with, and will abide by the restrictions described in 5 CFR part 2635 and Sec. 6401.102;

I have read and am familiar with, and will abide by the restrictions described in 5 CFR part 2635 and Sec. 6401.102

- (9) An identification of any EPA assistance agreements or contracts held by a person to or for whom services would be provided.

The American Tradition Institute does not accept grants from or enter contracts with federal governmental units. I am unaware of any assistance agreements or contracts between EPA and the American Tradition Institute, despite a good faith effort to identify same.